



THE ATTORNEY GENERAL OF TEXAS

Gerald C. Mann

~~JOHN BEN SHEPPARD~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Denver E. Perkins
County Attorney
Gonzales County
Gonzales, Texas

Opinion No. 0-2683
Re: Justices of the Peace -
Trial fees.

Dear Sir:

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"It has been the custom in our County for many years for the Justice of the Peace, on a plea of guilty, to enter a judgment of conviction against the defendant, and, if the defendant has no money, the Justice of the Peace quite often permits him to go at large without bail or recognizance and to accept periodical payments of installments on the fine and costs. It sometimes happens that the defendant dies or leaves the State before the fine and costs are paid. It quite often happens that neither the Justice of the Peace nor the Constable make any further effort to collect the fine and costs after judgment is entered, even though the defendant still lives in the County. However, the Justice of the Peace always presents his bill on the first of the month to the Commissioners' Court for his fee of \$2.50 in such case. Our Auditor has advised the Commissioners' Court that the Justice of the Peace is not due a fee in such a case since it is not a case that has been tried and finally disposed of by the Justice of the Peace. Needless to say, our justices of the peace take a different view of the matter. They have asked me to submit these facts to you for an opinion as to whether or not they are entitled to their fees before the fine and costs are paid.

"Of course, where judgment is deferred, no fees would be due until the judgment is at least made and entered by the Justice of the Peace on his docket against the defendant.

"The County Auditor takes the position that these articles require the judgment to be extended (i.e., fine paid or defendant jailed) immediately upon its entry and that unless it is executed the case has not finally been disposed of.

"Our County Judge in discussing the matter with me takes the position that the Justices of the Peace are not entitled to their fees in such case unless they show that they have shown due diligence in collecting the amount adjudged against the defendant. His view is that, if the defendant is dead or beyond the reach of the officers, the Justice is due his fees; if the defendant still lives in the County and the officers could execute the judgment, but fail to do so, that the Justice is not due his fee.

"I have taken the position that if a judgment of conviction is entered and not deferred that it should be executed at once and that the defendant should be committed to jail unless the fine and costs are paid in full and that there is no legal justification for allowing installment payments of fines and costs. However, it is my position that if the Justice of the Peace ignores this provision of law and enters the judgment on conviction or plea of guilty and no appeal is taken from the judgment that the case has nevertheless been finally disposed of and that the Justice of the Peace is entitled to his fee, regardless of whether or not he shows any diligence to collect the fine and costs."

Article 1052, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"Three Dollars shall be paid by the county to the County Judge, or Judge of the Court at law,

and Two Dollars and fifty cents shall be paid by the county to the Justice of the Peace, for each criminal action tried and finally disposed of before him. Provided, however, that in all counties having a population of 20,000 or less, the Justice of the Peace shall receive a trial fee of Three Dollars. Such Judge or Justice shall present to the Commissioners' Court of his county at a regular term thereof, a written account specifying each criminal action in which he claims such fee, certified by such Judge or Justice to be correct, and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they find to be correct, and order a draft to be issued upon the County Treasurer in favor of such Judge or Justice for the amount so approved. Provided the Commissioners' Court shall not pay any account on trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney, or his assistant, Criminal District Attorney or his assistant, and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in his judgment there was sufficient evidence in said cause to demand a trial of same."

Article 783, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"When the defendant is only fined the judgment shall be that the State of Texas recover of the defendant the amount of such fine and all costs of the prosecution, and that the defendant, if present, be committed to jail until such fine and costs are paid; or if the defendant be not present, that a capias forthwith issue, commanding the sheriff to arrest the defendant and commit him to jail until such fine and costs are paid; also, that execution may issue against the property of such defendant for the amount of such fine and costs."

Article 787, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"When a judgment has been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail until discharged as provided by law. A certified copy of such judgment shall be sufficient to authorize such imprisonment."

Article 788, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"When a pecuniary fine has been adjudged against a defendant not present, a capias shall forthwith be issued for his arrest. The sheriff shall execute the same by placing the defendant in jail."

Article 698, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the Court may, on written request of the defendant and for good cause shown, defer judgment until some day fixed by order of the Court; but in no event shall the judgment be deferred for a longer period of time than six (6) months. On expiration of the time fixed by the order of the Court, the Court or Judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 4, Title 9, of the Code of Criminal Procedure of the State of Texas. Provided further, that the Court or Judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his own recognizance, or may require him to enter into bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly

and severally, will pay such fine and costs unless the defendant personally appears on the day set in the order and discharges the judgment in the manner provided by Chapter 4, Title 9 of the Code of Criminal Procedure of the State of Texas; and for the enforcement of any judgment entered, all writs, processes and remedies of the Code of Criminal Procedure are made applicable so far as necessary to carry out the provisions of this Article."

Opinion No. 0-616 of this department holds that the Justice of the Peace's right to compensation from the county for his trial fee under Article 1052, C.C.P., does not depend upon the collection or enforcement of the judgment but rather on the rendition of his final judgment in so far as the Jurisdiction of his court is concerned.

Opinion No. 0-1759 of this department, holds among other things, that the Justice of the Peace is entitled to his trial fee when the judgment he renders becomes final in so far as his court and jurisdiction are concerned. For example, if a defendant was tried and found guilty, filed motion for new trial within the statutory time and the court overruled the motion and the defendant filed an appeal bond within the statutory time in order to appeal his case from the justice to the county court, the Justice's judgment is final in so far as his court is concerned and he is entitled to his trial fee from the county, regardless of the outcome of the case in the county court or the court of criminal appeals.

Opinion No. 0-1251 of this department holds that where judgment is deferred under Article 698, Vernon's Annotated Texas Code of Criminal Procedure, the justice of the peace would not be entitled to his trial fee from the county until the deferred judgment was entered and until thereafter the statutory time had elapsed to make it final in so far as the jurisdiction of the justice was concerned.

Opinion No. 0-1868 of this department holds that where one justice took a plea of guilty and entered judgment and another justice issued commitment and placed the defendant in jail, that the first justice was entitled to the trial fee. It was also held in this opinion that it was immaterial as to

which justice collected all or a portion of the fine and costs.

We enclose herewith copies of Opinions Nos. O-616, O-1251, O-1759 and O-1868, which contain full discussion of these questions.

Under Article 698, the justice may defer judgment in the manner outlined by the statute. However, he cannot receive his trial fee from the county until the deferred judgment is entered and becomes final in so far as his jurisdiction is concerned. If he enters judgment he has no authority to extend credit to the defendant and permit him to go without paying his fine and costs. When his judgment is entered it is the duty of the arresting officer to collect the fine or place the defendant in jail, unless prevented by defendant's appeal from said conviction in the manner outlined by law.

However, the justice of the peace is entitled to his trial fee from the county when his judgment becomes final in so far as his jurisdiction is concerned. We are also of the opinion that the unauthorized and illegal acts of the justice in extending credit to convicted defendants would not defeat his legal claim against the county for his trial fees legally earned.

It is the opinion of this department that your position in the matter is correct.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/ Wm.J. Fanning
Wm. J. Fanning
Assistant

WJF:AW:bt

APPROVED Sept.5,1940

Gerald C. Mann

Attorney General of Texas

Approved Opinion Committee

By BWB, Chairman